

30 MAR 1981

Executive Registry

81-3887

## OGC Has Reviewed

MEMORANDUM FOR: Director of Central Intelligence

VIA: Deputy Director of Central Intelligence

FROM: Daniel B. Silver  
General Counsel

SUBJECT: Selection of Court Security Officers Required by  
Security Procedures under the Classified Information Procedures Act

D/A REGISTRY

FILE: Legal

1. This is to request your designation of the Director of Security as your representative for selection of court security officers in cases involving Agency information under the Classified Information Procedures Act.

2. As you know, Congress enacted the Classified Information Procedures Act on 15 October 1980 to deal with the "graymail" issues which arise in criminal prosecutions that involve or may involve the use of classified information. As required by the Act, Chief Justice Warren Burger has issued the attached Security Procedures, which become effective on 30 March 1981.

3. Paragraph 2 of the Security Procedures requires the court to designate a court security officer in criminal cases in which classified information is within or expected to be within the custody of the court. The court security officer is responsible for document, personnel, physical and communications security and is to be selected by the court from among persons recommended by the Attorney General or the Department of Justice security officer, "with the concurrence of the head of the agency or agencies from which the classified information originates, or their representatives."

4. There are several criminal cases pending in which the Classified Information Procedures Act will be invoked. A case of immediate concern is United States v. [redacted], which is scheduled to go to trial on 21 April 1981 in the United States District Court in Baltimore. This case involves a former CIA employee who is charged with the impersonation of a CIA official. In order that a security officer in this case and other cases in the future may be designated without your personal

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involvement, I recommend that you designate the Director of Security as your representative for purposes of concurring in the selection of persons who will be recommended to the court as court security officer.



Daniel B. Silver

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Attachment:  
As stated.

CONCUR:

15/ Max Hugel  
Deputy Director for Administration

3/31/81  
(Date)

APPROVED:

/s/ William J. Casey  
Director of Central Intelligence

1 APR 1981  
(Date)

SECURITY PROCEDURES ESTABLISHED PURSUANT  
TO PUB. L. 96-456, 94 STAT. 2025, BY THE CHIEF  
JUSTICE OF THE UNITED STATES FOR  
THE PROTECTION OF CLASSIFIED  
INFORMATION

1. *Purpose.* The purpose of these procedures is to meet the requirements of Section 9 (a) of the Classified Information Procedures Act of 1980, Pub. L. 96-456, 94 Stat. 2025, which in pertinent part provides that:

"... [T]he Chief Justice of the United States, in consultation with the Attorney General, the Director of Central Intelligence, and the Secretary of Defense, shall prescribe rules establishing procedures for the protection against unauthorized disclosure of any classified information in the custody of the United States district courts, courts of appeal, or Supreme Court. . . ."

These procedures apply in all proceedings in criminal cases involving classified information, and appeals therefrom, before the United States district courts, the courts of appeal and the Supreme Court.

2. *Court Security Officer.* In any proceeding in a criminal case or appeal therefrom in which classified information is within, or reasonably expected to be within, the custody of the court, the court shall designate a court security officer. The Attorney General or the Department of Justice Security Officer, with the concurrence of the head of the agency or agencies from which the classified information originates, or their representatives, shall recommend to the court persons qualified to serve as court security officer. The court security officer shall be selected from among those persons so recommended.

The court security officer shall be an individual with demonstrated competence in security matters, and shall, prior to designation, have been certified to the court in writing by the Department of Justice Security Officer as cleared for the

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level and category of classified information that will be involved. The court security officer may be an employee of the Executive Branch of the Government detailed to the court for this purpose. One or more alternate court security officers, who have been recommended and cleared in the manner specified above, may be designated by the court as required.

The court security officer shall be responsible to the court for document, physical, personnel and communications security, and shall take measures reasonably necessary to fulfill these responsibilities. The court security officer shall notify the court and the Department of Justice Security Officer of any actual, attempted, or potential violation of security procedures.

3. *Secure Quarters.* Any *in camera* proceeding—including a pretrial conference, motion hearing, or appellate hearing—concerning the use, relevance, or admissibility of classified information, shall be held in secure quarters recommended by the court security officer and approved by the court.

The secure quarters shall be located within the Federal courthouse, unless it is determined that none of the quarters available in the courthouse meets, or can reasonably be made equivalent to, security requirements of the Executive Branch applicable to the level and category of classified information involved. In that event, the court shall designate the facilities of another United States Government agency, recommended by the court security officer, which is located within the vicinity of the courthouse, as the site of the proceedings.

The court security officer shall make necessary arrangements to ensure that the applicable Executive Branch standards are met and shall conduct or arrange for such inspection of the quarters as may be necessary. The court security officer shall, in consultation with the United States Marshal, arrange for the installation of security devices and take such other measures as may be necessary to protect against any unauthorized access to classified information. All of the aforementioned activity shall be conducted in a manner which does not interfere with the orderly proceedings of the court.

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Prior to any hearing or other proceeding, the court security officer shall certify in writing to the court that the quarters are secure.

4. *Personnel Security—Court Personnel.* No person appointed by the court or designated for service therein shall be given access to any classified information in the custody of the court, unless such person has received a security clearance as provided herein and unless access to such information is necessary for the performance of an official function. A security clearance for justices and judges is not required, but such clearance shall be provided upon the request of any judicial officer who desires to be cleared.

The court shall inform the court security officer or the attorney for the government of the names of court personnel who may require access to classified information. That person shall then notify the Department of Justice Security Officer, who shall promptly make arrangements to obtain any necessary security clearances and shall approve such clearances under standards of the Executive Branch applicable to the level and category of classified information involved. The Department of Justice Security Officer shall advise the court in writing when the necessary security clearances have been obtained.

If security clearances cannot be obtained promptly, personnel in the Executive Branch having the necessary clearances may be temporarily assigned to assist the court. If a proceeding is required to be recorded and an official court reporter having the necessary security clearance is unavailable, the court may request the court security officer or the attorney for the government to have a cleared reporter from the Executive Branch designated to act as reporter in the proceedings. The reporter so designated shall take the oath of office as prescribed by 28 U. S. C. § 753 (a).

Justices, judges and cleared court personnel shall not disclose classified information to anyone who does not have a security clearance and who does not require the information in the discharge of an official function. However, nothing

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contained in these procedures shall preclude a judge from discharging his official duties, including giving appropriate instructions to the jury.

Any problem of security involving court personnel or persons acting for the court shall be referred to the court for appropriate action.

5. *Persons Acting for the Defendant.* The government may obtain information by any lawful means concerning the trustworthiness of persons associated with the defense and may bring such information to the attention of the court for the court's consideration in framing an appropriate protective order pursuant to Section 3 of the Act.

6. *Jury.* Nothing contained in these procedures shall be construed to require an investigation or security clearance of the members of the jury or interfere with the functions of a jury, including access to classified information introduced as evidence in the trial of a case.

After a verdict has been rendered by a jury, the trial judge should consider a government request for a cautionary instruction to jurors regarding the release or disclosure of classified information contained in documents they have reviewed during the trial.

7. *Custody and Storage of Classified Materials.*

a. *Materials Covered.* These security procedures apply to all papers, documents, motions, pleadings, briefs, notes, records of statements involving classified information, notes relating to classified information taken during *in camera* proceedings, orders, affidavits, transcripts, untranscribed notes of a court reporter, magnetic recordings, or any other submissions or records which contain classified information as the term is defined in Section 1.(a) of the Act, and which are in the custody of the court. This includes, but is not limited to (1) any motion made in connection with a pretrial conference held pursuant to Section 2 of the Act. (2) written statements submitted by the United States pursuant to Section 4 of the Act, (3) any written statement or written notice sub-

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mitted to the court by the defendant pursuant to Section 5 (a) of the Act, (4) any petition or written motion made pursuant to Section 6 of the Act, (5) any description of, or reference to, classified information contained in papers filed in an appeal, pursuant to Section 7 of the Act and (6) any written statement provided by the United States or by the defendant pursuant to Section 8 (c) of the Act.

**b. Safekeeping.** Classified information submitted to the court shall be placed in the custody of the court security officer who shall be responsible for its safekeeping. When not in use, the court security officer shall store all classified materials in a safe or safe-type steel file container with built-in, dial-type, three position, changeable combinations which conform to the General Services Administration standards for security containers. Classified information shall be segregated from other information unrelated to the case at hand by securing it in a separate security container. If the court does not possess a storage container which meets the required standards, the necessary storage container or containers are to be supplied to the court on a temporary basis by the appropriate Executive Branch agency as determined by the Department of Justice Security Officer. Only the court security officer and alternate court security officer(s) shall have access to the combination and the contents of the container unless the court, after consultation with the security officer, determines that a cleared person other than the court security officer may also have access.

For other than temporary storage (*e. g.*, brief court recess), the court security officer shall insure that the storage area in which these containers shall be located meets Executive Branch standards applicable to the level and category of classified information involved. The secure storage area may be located within either the Federal courthouse or the facilities of another United States Government agency.

**c. Transmittal of Classified Information.** During the pendency of a trial or appeal, classified materials stored in the

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facilities of another United States Government agency shall be transmitted in the manner prescribed by the Executive Branch security regulations applicable to the level and category of classified information involved. A trust receipt shall accompany all classified materials transmitted and shall be signed by the recipient and returned to the court security officer.

*8. Operating Routine.*

a. *Access to Court Records.* Court personnel shall have access to court records only as authorized. Access to classified information by court personnel shall be limited to the minimum number of cleared persons necessary for operating purposes. Access includes presence at an *in camera* hearing or any other proceeding during which classified information may be disclosed. Arrangements for access to classified information in the custody of the court by court personnel and persons acting for the defense shall be approved in advance by the court, which may issue a protective order concerning such access.

Except as otherwise authorized by a protective order, persons acting for the defendant will not be given custody of classified information provided by the government. They may, at the discretion of the court, be afforded access to classified information provided by the government in secure quarters which have been approved in accordance with § 3 of these procedures, but such classified information shall remain in the control of the court security officer.

b. *Telephone Security.* Classified information shall not be discussed over standard commercial telephone instruments or office intercommunication systems.

c. *Disposal of Classified Material.* The court security officer shall be responsible for the secure disposal of all classified materials which are not otherwise required to be retained.

*9. Records Security.*

a. *Classification Markings.* The court security officer, after consultation with the attorney for the government, shall



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be responsible for the marking of all court documents containing classified information with the appropriate level of classification and for indicating thereon any special access controls that also appear on the face of the document from which the classified information was obtained or that are otherwise applicable.

Every document filed by the defendant in the case shall be filed under seal and promptly turned over to the court security officer. The court security officer shall promptly examine the document and, in consultation with the attorney for the government or representative of the appropriate agency, determine whether it contains classified information. If it is determined that the document does contain classified information, the court security officer shall ensure that it is marked with the appropriate classification marking. If it is determined that the document does not contain classified information, it shall be unsealed and placed in the public record. Upon the request of the government, the court may direct that any document containing classified information shall thereafter be protected in accordance with § 7 of these procedures.

*b. Accountability System.* The court security officer shall be responsible for the establishment and maintenance of a control and accountability system for all classified information received by or transmitted from the court.

*10. Transmittal of the Record on Appeal.* The record on appeal, or any portion thereof, which contains classified information shall be transmitted to the court of appeals or to the Supreme Court in the manner specified in § 7 (c) of these procedures.

*11. Final Disposition.* Within a reasonable time after all proceedings in the case have been concluded, including appeals, the court shall release to the court security officer all materials containing classified information. The court security officer shall then transmit them to the Department of Justice Security Officer who shall consult with the originating

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agency to determine the appropriate disposition of such materials. Upon the motion of the government, the court may order the return of the classified documents and materials to the department or agency which originated them. The materials shall be transmitted in the manner specified in § 7 (c) of these procedures and shall be accompanied by the appropriate accountability records required by § 9 (b) of these procedures.

12. *Expenses.* Expenses of the United States Government which arise in connection with the implementation of these procedures shall be borne by the Department of Justice or other appropriate Executive Branch agency.

13. *Interpretation.* Any question concerning the interpretation of any security requirement contained in these procedures shall be resolved by the court in consultation with the Department of Justice Security Officer and the appropriate Executive Branch agency security officer.

14. *Term.* These procedures shall remain in effect until modified in writing by The Chief Justice after consultation with the Attorney General of the United States, the Director of Central Intelligence, and the Secretary of Defense.

15. *Effective Date.* These procedures shall become effective forty-five days after the date of submission to the appropriate Congressional Committees, as required by the Act.

Issued this 12th day of February, 1981, after taking into account the views of the Attorney General of the United States, the Director of Central Intelligence, and the Secretary of Defense, as required by law.

/s/ WARREN E. BURGER  
Chief Justice of the  
United States

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